IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.28 OF 2005

IN

ARBITRATION PETITION NO.277 OF 2004

Kokan Mercantile Co-op. Bank Ltd. ...Petitioners

v/s

Tadvi Yusuf Khan Fakhroo Khan and anr. ...Respondents

Mrs Lambay i/b M/s Lambay and Co. for Petitioners.

Ms Seema Singh i/b Dr M.S.A. Khan for Respondent No.1.

Respondent No.1 present in person.

CORAM : D.K. DESHMUKH J.

DATE : 26TH MARCH 2007.

P.C. :-

1. By this petition, the petitioners allege that the respondent No.1 has committed breach of the undertaking given by him to the Court which is recorded in the order dated 19th July 2004 in arbitration petition No.277 of 2004. The relevant part of the order is as under :-

> "The learned counsel appearing for the petitioner states that the petitioner undertakes to deposit an amount of Rs.95,000/- in this Court within a period of two months from today. The petitioner is also present in the Court. Undertaking is accepted."

. It appears that thereafter the respondent No.1 moved this Court for grant of extension of time, but the Court instead of granting him extension of time reduced the time from eight weeks to four weeks because the Court found that the respondent No.1 was making contradictory statements and was making false representation to the Advocate for the other side. The amount was not deposited, instead again the Court was moved for seeking time upto 22nd November 2004 to deposit the amount and the same was granted.

Admittedly, the amount is not deposited, therefore, this contempt petition was filed. Though the respondent No.1 was served with the contempt petition, he did not appear before the Court on 8th April 2005. The Court therefore heard the learned counsel appearing for petitioners, admitted the petition and issued show cause notice against the respondent No.1. Though the respondent No.1 was served with the show cause notice, he did not appear before the Court when the matter was placed before the Court for final hearing. Therefore, by order dated 7th March 2006, the Court was forced to issue bailable warrant against the respondent No.1 to secure his presence before the Court. It is only after the bailable warrant was issued, the respondent No.1 has appeared before the Court. The respondent No.1 has filed his affidavit. In that affidavit, he does not dispute that he has not abided by his undertaking and has not deposited the amount. The only explanation given is to be found in paragraphs 8 and 9. They read as under :-

> "8. I say that I am doing the business of communications. I say that due to slack in business, my financial position was not good. I was suffering with lot of financial crises. I say that I also approached my friend and relative to obtain loan to comply with the

order of this Hon'ble Court, but I failed to obtain the loan.

9. I further say and submit that I have not initially or deliberately, purposely avoided to comply with the order of this Hon'ble Court. I also submit that I am ready and willing to comply with the order dated 19.7.2004 of this Hon'ble Court. I say that considering the facts and circumstances, this Hon'ble Court be pleased to direct to deposit the sum of Rs.95,000/- in compliance with the order dated 19.7.2004."

. Now, the respondent No.1 himself had given undertaking that he will deposit the amount of Rs.95,000/- in Court. Therefore, if the respondent No.1 has not abided by his undertaking, first he has to explain as to why he gave that undertaking to the Court and then he has to explain why he did not abide by the undertaking which he himself had given to the Court. One does not find any explanation given by the respondent No.1 for giving undertaking to the Court which he had no intention to abide by. The reason given by the respondent No.1 for not abiding by his undertaking is that the business was slack and his financial position was not good. There are no documents

produced in support of his claim, no balance-sheet is produced, no account-books are produced. The statements made are also extremely vague. It is nowhere clarified from what date, from what month the financial position of the respondent No.1 allegedly worsened. In this regard, the financial position of the respondent No.1 is a fact which is within the special knowledge of the respondent No.1 and therefore, it was for the respondent No.1 to give full details about the fact if he wanted to rely on that. In the absence of any details and in the absence of any documents filed, the justification given by the respondent No.1 cannot be accepted. In paragraph 9 of the affidavit in reply quoted above, he states that he is willing to deposit the amount of Rs.95,000/- but no reason is given why if he was willing to deposit he did not deposit the amount. He could have moved the Court for an order permitting him to deposit the amount. He has not moved the Court for permission to deposit the amount. Therefore, the statement made in paragraph 9 that he is willing to deposit the amount as per his undertaking is again merely an eyewash and has been made only to delay and avoid the proceedings. initially, the respondent No.1 was represented by a lawyer. When the matter was called, the lawyer appearing for respondent No.1 did not seek any adjournment. Therefore, I proceeded to hear the petitioner. after hearing the petitioner I called upon the lawyer appearing for

respondent No.1 to argue the matter and at the end of the argument, she mentioned that she should be granted adjournment because her senior is not there. In my opinion, grant of such request at such belated stage amounts to waste of time. If the lawyer concerned was not willing to go on with the matter, a request for adjournment should have been made at the initial stage and not after hearing the matter. The practice of lawyers seeking adjournment in such manner has to be deprecated. From what is observed above, it is clear that the respondent No.1 has wilfully and deliberately committed breach of the undertaking given to this Court. It is pertinent to note here that the undertaking was given by the respondent No.1 in arbitration petition where the petitioner was seeking interim order against the respondent No.1. It is because of his undertaking that the Court did not pass any interim order. By giving the undertaking, the respondent No.1 avoided the Court passing interim order against him and he has committed breach of the undertaking. In my opinion, considering the tendency of the litigant of making statement and giving undertaking before the Court with no intention to abide by the same just to avoid an adverse order being passed against them has to be curbed. The respondent No.1 has tendered apology, but it becomes clear from the conduct of the respondent No.1 which has been referred to above that the apology is

given only to avoid punishment being imposed on the respondent No.1. The apology therefore cannot be said to be genuine and therefore it is rejected. In my opinion, considering the conduct of the respondent No.1 imposing sentence on the respondent No.1 would be in the interest of justice. The respondent No.1 is therefore directed to undergo simple imprisonment for a period of one month. He is also directed to pay fine of Rs.2,000/-. The respondent No.1 shall also pay as and by way of cost of this petition Rs.10,000/- to the petitioners. The fine and the cost to be paid within a period of two weeks from today.

2. At the request of the learned counsel appearing for respondent No.1, that part of the order imposing sentence is stayed for a period of six weeks subject to the condition that the amount of fine and cost is paid within two weeks from today.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.